



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

### TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 080012

Petitioner, Fern Kanter, applied to the Building Commissioner for permission to construct an additional parking space for a total of five parking spaces in the front setback of the property at 89 Winthrop Road. The application was denied and an appeal was taken to this Board.

On 27 March 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 22 May 2008, at 7:15 p.m. on the 2<sup>nd</sup> floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 01 and 08 May 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### NOTICE OF HEARING

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **FERN KANTER**

Location of Premises: **89 WINTHROP RD BRKL**

Date of Hearing: **05/22/2008**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Main Library, 2<sup>nd</sup>. floor**

A public hearing will be held for a variance and/or special permit from

1. **6.04.5.a, Design of Off Street Parking Facilities. Variance Required.**
2. **6.04.5.b, Design of Off Street Parking Facilities. Variance Required.**
3. **6.04.12, Design of Off Street Parking Facilities. Special Permit Required.**
4. **6.04.14, Design of Off Street Parking Facilities, Variance Required.**
5. **Modification of Board of Appeals Case #2503, granted 10 November, 1981**

of the Zoning By-Law to convert a portion of the attic into habitable floor space to be combined as part of the third floor dwelling unit per plans at **89 WINTHROP RD BRKL**.

Said Premise located in an **M-1.0** district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr and Board Members Murray Shocket and Kathryn Ham. The petitioner, Fern Kanter, also present at the hearing, was represented by Fred Lebow of 71 Colchester Street, Brookline, MA. On 10 November 1981, the Board of Appeals, granted relief for the subject property to legalize the conversion from a two-family to a three-family dwelling. At the same hearing the Board allowed four parking spaces, two of which are tandem. Although



requested, the Board specifically denied a request to establish a single space in the area requested by the petitioner.

Mr. Lebow described the site and neighborhood as a 2 ½-story, three-family dwelling located on the south side of Winthrop Road immediately next to Winthrop Path, near Washington Square. Currently the west side of the front yard is paved to provide parking for four cars, two of them tandem. The rest of the front yard is landscaped. He said that the lot slopes dramatically down from the front lot line toward the rear, and a large retaining wall with a fence runs along the side and rear lot lines; the rear of the lot is landscaped. Other properties in the immediate neighborhood include two and three-family residential dwellings. Some of these dwellings also have multiple front yard parking spaces. Mr. Lebow said that the petitioner, Fern Kanter, is proposing to install a parking space in the eastern portion of the front yard next to Winthrop Path. Currently this area is landscaped and has a small retaining wall and brick walkway. The proposed parking space would be 10.7 feet wide by 18 feet deep and located immediately next to the side lot line along Winthrop Path. A new set of stairs would be constructed at the end of this space leading down towards the lower level unit's entrance.

The Chair read into the record a letter from the 89 Winthrop Road condominium association dated 19 May 2008 in support of Ms. Kanter's request for relief. Ms. Kanter read into the record an e-mail regarding her situation relative to parking. She said that she moved to this address from Florida two years ago and has until recently rented parking space off Addington Path. She described the distance to the space as a healthy walk on a good day. She said that the recent weather has exacerbated a knee condition making it difficult, particularly in bad weather, to access her vehicle. She said she has made temporary accommodations with her neighbor but these are no longer available and she sometimes resorts to parking in the street. She also said

that during snowy weather, Addington Path is not cleared making the traverse difficult. She said she has watched for neighboring spaces that became available but that the spaces rent very quickly. The Chair read into the record a petition in support signed by six occupants of 124 Winthrop Road, three occupants of 92 Winthrop Road and four occupants of 89 Winthrop Road. The petition was marked as an exhibit and made part of the official file. Mr. Lebow provided photographs of the site which were made part of the record. Murray Shocket asked about the parking already on the property and Mr. Lebow confirmed that there are already four spaces to the left of the property. Mr. Lebow stated that the existing brick walk, about four feet wide, would be incorporated into the ten foot wide drive. Mr. Lebow showed the rear of the home and the top of Winthrop Path. He said that the petitioner did extensive work to a retaining wall to the rear of the home. The hedge to the right of the walkway would be removed and with the help of a landscaper, it would be replaced by alternative plantings. Werner Lohe, TMM Pct. 13, submitted a letter dated 19 May 2008 stating that, in his opinion the granting of relief for this project would have serious negative impact on the neighborhood. Mr. Lebow pointed out that Mr. Lohe was not from the neighborhood and lived a considerable distance from the site. Mr. Lebow provided photographs of projects with similar characteristics done on University Road in the past. He said that relief has been granted for similar projects at 24 Bowker Road and 253 Mason Terrace. The Chair also recognized letters in opposition to the proposal dated 30 April 2008 from Arthur and Alice Burney of 69 Winthrop Road and from Paula and Frank Steen of 67 Winthrop Road.

The Chair asked whether anyone present would like to speak in support of the petition and no one responded. She also asked whether anyone would like to speak in opposition. Ms. Linda Pehlke of 48 Brown Street stated that she was not a neighbor but the author of a book entitled



“Exploring the Paths of Brookline”. Ms. Pehlke said she does not think that providing parking next to a historic resource, the path, is a good idea. She said that in her opinion it would be a detriment to the streetscape and the neighborhood as well as increasing the impervious surface in town. She said the views of the street and architecture of the house would be affected by a parking space in this location. She said that while she has sympathy for the petitioner’s difficulties, she purchased her property knowing its limitations and if everyone in Brookline wanted to park on their front lawn, there would be no front lawns left in Brookline. She said she didn’t see how the proposal met the criteria for the granting of a variance. Mr. Lebow stated that the bricks will be replaced by pavers which will withstand the rigors of parking better than brick. The Chair pointed out that the hard surface will be increased by six feet.

Ms. Lara Curtis, Planner, described the findings and zoning relief required for the Board.

**Section 6.04.5.a – Design of All Off-Street Parking Facilities:** In all districts, parking stalls shall be set back from the street lot line a minimum of five feet.

**Section 6.04.5.b – Design of All Off-Street Parking Facilities:** In M-1.0 districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back a minimum of 10 feet from all street lot lines and 5 feet from all other lot lines.

**Section 6.04.14 – Design of All Off-Street Parking Facilities:** No more than 40% of the width, or 24 feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to parking or other vehicular use, including garage or drive-through space... The Planning Board may allow the foregoing limitation to be exceeded with respect to side facades on corner lots provided that the overall visual and other impact of the vehicular use would be less than locating the vehicular use on the front façade as of right, and may also allow the foregoing limitation to be exceeded upon reports from the Commissioner of Public Works and the Director of Transportation that modification of the limitation is necessary for safe vehicular use and the determination of the Planning Board that no other feasible design would permit safe vehicular use while reducing the visual and other impact of such use. In addition to complying with the other provisions of this by-law, ...**the surfaced area of parking and entrance and exit drives shall not exceed the width allowable pursuant to this section,** and all remaining space between the building and the street shall be landscaped open space as defined in Section 2.15, paragraph 2. Variance or Planning Board determinations required.

Proposed Driveway	Required/Allowed	Existing	Proposed	Relief
Maximum Amount of Façade Devoted to Parking	20 feet (40% of building façade)	18 feet	28.8 feet	Variance / PB Determination†
Parking Front Setback	10 feet	n/a	0 feet	Special Permit*



<b>Parking Side Setback**</b>	10 feet	n/a	0 feet	Special Permit *
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† See Section 6.04.14 above.

\*Under Section 6.04.12, the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing buildings.

\*\*Under Section 2.19.4 of the Zoning By-law, Winthrop Path is considered a "street," and the side lot line is also a street lot line.

**Board of Appeals Case #2503, dated November 10, 1981:** This Board of Appeals decision specifically did not allow the installation of a parking space in the currently proposed location. Condition #1 attached to the decision is as follows: **"The plans are to be amended to eliminate the parking stall in the eastern front yard."** *Modification required.*

Ms. Curtis stated that the majority of the Planning Board was not opposed to this proposal to establish a parking space within the front yard setback at 89 Winthrop Road. There are several dwellings along Winthrop Road with front yard parking arrangements, and this new parking space would be relatively small. The topography of the lot makes the installation of additional parking facilities elsewhere on the lot very difficult. Although not opposed to the proposal, the Planning Board felt that the plan provided did not sufficiently indicate site features, and should be revised to provide more detail prior to issuance of a building permit. Additionally, the street tree near the proposed parking space appears to be in poor condition due to overhead wires, and, if the Town Tree Warden agrees, should be replaced at the applicant's cost, with a new street tree located in a more optimal location. Therefore, should the Board of Appeals find that the proposal meets the requirements for a variance, the Planning Board recommended (2-1) approval of the proposal and the submitted plan, titled "89 Winthrop Road, Proposed Additions," prepared by Bruce Bradford and dated 3/18/08, subject to the following conditions:

1. **Prior to issuance of a building permit, a final landscaping plan, indicating both plant and paving materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **No portion of any vehicle parked in the dwelling's parking facilities shall overhang the public sidewalk.**

3. The public street tree located in front of the dwelling shall be replaced with a new street tree, at the applicant's cost, in a more optimal location, subject to the review and approval of the Town's Tree Warden. Should the Tree Warden determine retaining the existing tree is more desirable, the tree shall be protected from damage during construction of the parking area.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, indicating details regarding the new curb cut and the walkway and stairs leading to the parking area; 2) final elevations of any retaining walls for the parking area, indicating materials, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the home in question is well kept and several other homes in the neighborhood have similar parking arrangements. He said that the Building Department is supportive of the conditions recommended by the Planning Board.

Having no further input, the Board then deliberated their decision relative to the petition. The Chair stated that as she read Section 6.04.14, the petition required a variance. She said that no one had addressed the statutory requirements for a variance. The Chair said that the Board can only grant a variance where the permit granting authority finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district where it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purposes of the ordinance or by-law. The Chair said that although personally sympathetic to the petitioner's having to walk in bad weather, she had heard nothing that would support the granting of a variance. Mr. Shocket said he felt that the petitioner did not



meet the statutory criteria for the granting of a variance. He noted that there are already four spaces in the front yard. Kathryn Ham stated that the Board did not have the authority for the granting of a variance given the testimony presented in the case. The Chair commented that a previous decision by the Board denied a request for a parking space in the same location and she was not comfortable modifying the previous decision, case # 2503. She said that while the petitioner may have met the requirements for relief by special permit, she heard nothing that had to do with the soil conditions, the shape or topography of the lot which does not affect generally the zoning district.

The Board therefore, voted unanimously, to deny the relief requested by the petitioner because the statutory requirements for the granting of a variance as provided in M.G.L. Ch 40A S 10 had not been met.


Unanimous Decision of  
the Board of Appeals

Filing Date: June 6, 2008

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

  
Enid Starr

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REGISTRARS OF VOTERS

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